



Brussels, **XXX**
[...](2021) **XXX** draft

COMMISSION DELEGATED DIRECTIVE (EU) .../...

of **XXX**

amending, for the purposes of adapting to scientific and technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for the use of mercury in other High Pressure Sodium (vapour) lamps for general lighting purposes

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

This Commission Delegated Directive amends, for the purpose of adapting to technical and scientific progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast)¹ (the RoHS Directive). The amendment concerns an exemption for specified applications containing mercury in other high pressure sodium lamps for general lighting purposes.

The RoHS Directive restricts the use of certain hazardous substances in electrical and electronic equipment (EEE), as specified in Article 4. Ten substances are currently restricted and listed in Annex II to RoHS: lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE), bis (2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP). Annexes III and IV list EEE materials and components for specific applications that are exempt from the substance restrictions laid down in Article 4(1).

Article 5 of the Directive provides for the adaptation of Annexes III and IV to scientific and technical progress, which can include granting, renewing and revoking of exemptions. Pursuant to Article 5(1)(a), exemptions are to be included in Annexes III and IV only if such inclusion does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 (REACH)² and where any of the following conditions is fulfilled: (i) their elimination or substitution via design changes or materials and components which do not require any of the materials or substances listed in Annex II is scientifically or technically impracticable; (ii) the reliability of substitutes is not ensured; (iii) the total negative environmental, health and consumer safety impacts caused by substitution are likely to outweigh the total environmental, health and consumer safety benefits thereof.

Decisions on exemptions, and their duration, must take into account the availability of substitutes and the socioeconomic impact of substitution. Decisions on the duration of exemptions are also to take into account any potential impact on innovation. Life-cycle thinking on the overall impacts of the exemption must be applied, where relevant.

Article 5(1) (a) also specifies that, to include materials and components of EEE for specific applications listed in Annexes III and IV, the Commission must adopt individual delegated acts. Article 5(3) and Annex V describe the procedure for submitting exemption-related applications.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission receives requests³ from economic operators to grant or renew exemptions under Article 5(3) and Annex V to the RoHS Directive.

The current Annex III exemption 4(c) permits the use of mercury in other High Pressure Sodium (vapour) lamps for general lighting purposes not exceeding the following values (per burner): 4(c)-I $P \leq 155 \text{ W}$: 25 mg; 4(c)-II $155 \text{ W} < P \leq 405 \text{ W}$: 30 mg; 4(c)-III $P > 405 \text{ W}$: 40 mg.

¹ OJ L 174, 1.7.2011, p. 88.

² OJ L 396, 30.12.2006, p. 1.

³ The list is available at: http://ec.europa.eu/environment/waste/rohs_eee/adaptation_en.htm.

The Commission received one application for the renewal of this exemption in January 2015. The applicants in essence claimed the lack of availability of substitutes for applications covered by that exemption as the reduction or omission of mercury in these lamps leads to loss of efficacy.⁴ An updated application was submitted, by the same applicants, in January 2020, including a reduction of the mercury content as compared to the 2015 application. In line with the requirements of the RoHS Directive (Article 5(5), second subparagraph), the exemption remains valid until the Commission takes a decision on the renewal application.

To evaluate the application to renew that exemption, the Commission launched a study in June 2015⁵, concluded in 2016, to carry out the required technical and scientific assessment, including an eight-week online stakeholder consultation.⁶ Further to that study assessing the extensive technical and scientific data and contributions received, as documented in the study report, the Commission carried out two complementary studies/updates, including stakeholder involvement. The study published in 2019⁷ focussed on the socioeconomic assessment and availability of substitutes, whilst an update based on recent figures and modelling was carried out in 2020⁸. The final reports of the study and of the socioeconomic assessment updates were published⁹; stakeholders were notified.

The Commission consulted the Member State expert group for delegated acts under the RoHS Directive during the expert meetings of 1 September 2016, 29 October 2018 and 21 October 2019 to collect Member States' views with regard to an envisaged course of action in line with the conclusions of the evaluations. It carried out all the requisite procedural steps relating to exemptions from the substance restriction under Article 5(3) to 5(7) have been performed.¹⁰ The Council and the European Parliament were notified of all activities.

The final reports highlighted that:

- mercury-free substitutes are available on the system level (for use in new light emitting diode (LED) luminaires), but such substitutes are not compatible as substitutes in existing High Pressure Sodium (vapour) (HPS) lamps (component replacement). Therefore, an early phase-out of HPS lamps may lead to existing HPS luminaires reaching the end of their lives early and to overall environmental drawbacks. It was also concluded that time is still needed to develop sufficient alternatives, reason for which the renewal of the exemption for the maximum duration of a further five years was recommended.
- HPS lamps with reduced mercury content compared to current levels are available in different shapes and for different wattages. The exemption should therefore be renewed with reduced mercury content.

In conclusion, the scientific and technical assessments, including stakeholder consultations, detailed that the exemption criteria continue to be met with regard to exemption 4(c) I to III.

⁴ http://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_Pack_9/Exemption_4_c_III/4c_LE_RoHS_Exemption_Req_Final.pdf.

⁵ Final Report of the study is available at <https://op.europa.eu/en/publication-detail/-/publication/a3fdcc8c-4273-11e6-af30-01aa75ed71a1>.

⁶ Consultation period: 21 August 2015 to 16 October 2015, <http://rohs.exemptions.oeko.info>.

⁷ https://rohs.exemptions.oeko.info/fileadmin/user_upload/reports/FWCW_RoHS_Lamps_SEA_20190729_Final.pdf

⁸ <https://op.europa.eu/en/publication-detail/-/publication/f44f2383-dd0a-11ea-adf7-01aa75ed71a1/language-en/format-PDF/source-146144383>, starting on page 92.

⁹ https://ec.europa.eu/environment/waste/rohs_eee/studies_rohs1_en.htm.

¹⁰ A list of the required administrative steps is available on the [Commission website](#). Current stage of the procedure can be viewed for each draft delegated act in the Interinstitutional Registry of Delegated Acts at <https://webgate.ec.europa.eu/regdel/#/home>.

The evaluation results also showed that renewing this exemption with reduced mercury content would not weaken the environmental and health protection afforded by the REACH Regulation, in accordance with Article 5 of Directive 2011/65/EU.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated directive renews exemption 4(c) I to III listed in Annex III to Directive 2011/65/EU for the use of mercury in other high pressure sodium lamps for general lighting purposes. The mercury content allowed in the specified applications is reduced to correspond to technical progress for the specified lamps types.

The Commission's assessment, based on the supporting studies and consultations, concluded that the exemption request meets at least one of the criteria laid down in Article 5(1)(a) of the RoHS Directive, which justifies extending the exemption: mercury cannot be reliably substituted in the lamp categories covered by this exemption.

In summary, the conditions for the exemption are fulfilled, and exemption 4 (c) entries I to III are to be renewed. The assessment also concluded that, due to technical progress, the mercury content allowed for each of the exemption entries can be lowered.

The expiry dates for this exemption are set in line with Article 5 (2), first subparagraph. As concluded by the evaluation, the state of development of substitutes justifies renewing the exemption for the maximum validity period of five years. The validity periods are not expected to have an adverse impact on innovation.

The legal instrument is a delegated directive, which is in line with the enabling legal act, namely Directive 2011/65/EU, in particular to meet the requirements set out in Article 5(1)(a) thereof.

The objective of the delegated directive is to contribute to the protection of human health and the environment and to align the provisions for the functioning of the internal market in the field of electrical and electronic equipment, by allowing the use of otherwise banned substances for specific applications, with the provisions and under the conditions of the RoHS Directive and the procedure for adapting Annexes III and IV to scientific and technical progress.

The delegated directive has no implications on the EU budget.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment¹, and in particular Article 5(1), point (a), thereof,

Whereas:

- (1) Directive 2011/65/EU requires Member States to ensure that electrical and electronic equipment placed on the market does not contain the hazardous substances listed in Annex II to that Directive. That restriction does not apply to certain exempted applications listed in Annex III to that Directive.
- (2) The categories of electrical and electronic equipment to which Directive 2011/65/EU applies are listed in Annex I to that Directive.
- (3) Mercury is a restricted substance listed in Annex II to Directive 2011/65/EU.
- (4) By Decision 2010/571/EU², the Commission granted, among other things, an exemption for the use of mercury in other High Pressure Sodium (vapour) lamps for general lighting purposes ('the exemption'), which is now listed as exemption 4(c)-I, 4(c)-II and 4(c)-III in Annex III to Directive 2011/65/EU. [The exemption was to expire on 21 July 2016, in accordance with Article 5(2), second subparagraph, point (a), of that Directive][*as per explanatory note*].
- (5) Mercury is used in High Pressure Sodium (vapour) lamps for light colour and colour rendering properties.
- (6) On 15 January 2015, the Commission received an application for renewal of the exemption ('the renewal application'), that is within the time limit laid down in Article 5(5) of Directive 2011/65/EU, which was updated with additional information on 20 January 2020. In accordance with Article 5(5) of Directive 2011/65/EU, the exemption remains valid until a decision on the renewal application has been taken.

¹ OJ L 174, 1.7.2011, p. 88.

² Commission Decision 2010/571/EU of 24 September 2010 amending, for the purposes of adapting to scientific and technical progress, the Annex to Directive 2002/95/EC of the European Parliament and of the Council as regards exemptions for applications containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers (OJ L 251, 25.9.2010, p. 28).

- (7) The evaluation of the renewal application, which took into account the availability of substitutes and the socioeconomic impact of substitution, concluded that the substitution or elimination of mercury in the applications concerned is currently technically impracticable. The evaluation also concluded that the content of mercury allowed in those specific applications should be reduced to correspond to the changes in the market for the specific lamps types. The evaluation included stakeholder consultations in accordance with Article 5(7) of Directive 2011/65/EU. The comments received during those consultations were made publicly available on a dedicated website.
- (8) The exemption is consistent with Regulation (EC) No 1907/2006 of the European Parliament and of the Council³ and thus does not weaken the environmental and health protection afforded by it.
- (9) It is therefore appropriate to grant the renewal of the exemption as concerns entries 4(c)-I, 4(c)-II and 4(c)-III in Annex III to Directive 2011/65/EU for a maximum period of five years, as no reliable substitutes are currently available, in accordance with Article 5(2), first subparagraph, of that Directive. In view of the results of the ongoing efforts to find a reliable substitution, the duration of the exemption is unlikely to have adverse impacts on innovation.
- (10) Directive 2011/65/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex III to Directive 2011/65/EU is amended as set out in the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by [\[the last day of the sixth month after the date of entry into force of this Directive\]](#) at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
They shall apply those provisions from [\[the last day of the sixth month after the date of entry into force of this Directive + 1 day\]](#).
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

³ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Commission
Ursula VON DER LEYEN
The President

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